No. 78-1495

In The

Supreme Court of the United States

October Term, 1978

WILMA RIGGS,

Petitioner,

v.

LAURENS DISTRICT 56, A BODY POLITIC AND CORPORATE; DR. CHARLES L. CUMMINS, JR., DISTRICT SUPERINTENDENT, AND THE FOLLOWING MEMBERS OF THE BOARD OF TRUSTEES: DR. W. FRED CHAPMAN, JR., CHAIRMAN OF THE BOARD; RICHARD SWETENBURG, RALSA FULLER, JOHN ADAIR, SAM BLACKMON, CALVIN COOPER, AND JOHN E. WILLINGHAM, ALL PERSONALLY, INDIVIDUALLY, JOINTLY AND SEVERALLY, AND THE SUCCESSORS IN THE OFFICE OF EACH,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

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As we explained in our Petition for a Writ of Certiorari, this case raises a question that goes to the heart of the meaning and scope of 42 U.S.C. § 1981: does that law secure only freedom from discriminatory refusals to contract, or does it also secure freedom from discrimination in a contractually-based relationship—here an employment relationship. Respondents suggest that the question is neither important nor unresolved. But nothing in respondents' Brief in Opposition supports respondents' assertion that the question raised here as to the reach of § 1981 is unimportant. And respondents' attempt to argue that the question presented is a settled one depends entirely on cases which have nothing to do with the construction of

§ 1981.[1] Thus, respondents' discussion of the issue raised in our petition does not diminish from our showing that the petition should be granted.

In addition to discussing the question that is presented by the petition respondents also address at some length the merits of a question that is *not* presented: whether § 1981 permits race conscious teacher assignments as part of a voluntary affirmative action or desegregation plan. In our Petition at 6 n. 4 we showed that the South Carolina Supreme Court (whose decision is reprinted at 20a-22a of our Petition) did not reach any such issue; the only federal question it decided—and thus the only federal question raised by this case and posed by our petition for a writ of certiorari—is the one previously stated concerning the reach of § 1981. Moreover, on its facts, this case could not raise any question concerning the lawfulness, under § 1981, of a public employer adopting an affirmative action or desegregation plan, whether done voluntarily or under compulsion by the Federal Government. The findings of the trial court establish that the transfer of petitioner from one school to another, was *not* made pursuant to an affirmative action plan.[2] Thus, the only issue properly presented by this case is the issue raised in our petition for a writ of certiorari. That issue is worthy of this Court's attention. Accordingly, a writ of certiorari should issue to review the judgment and decision of the South Carolina Supreme Court.

Respectfully submitted,

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[1] Respondents assert (at 4), without any supporting logic or precedent, that the threshhold requirement for a § 1981 claim is proof that the claimant "has a protected property or contractual interest"; based on this assertion, respondents proceed to argue that *Board of Regents* v. *Roth*, 408 U.S. 564 (1972) and *Adler* v. *Board of Education*, 342 U.S. 485 (1952), establish that petitioner here had no such interest. Respondents' argument fails at its premise. If one thing is settled about the reach of § 1981, it is that the law does *not* protect only those who have a "protected property or contractual interest"; indeed a racially discriminatory refusal to enter into a contract—whether an employment contract or other contract—is a core violation of § 1981. *Runyon* v. *McCrary*, 427 U.S. 160 (1976). The question presented here is whether § 1981 protects against discrimination not only in the formation of contracts but also in a contractually-based relationship. On that issue—which is an open one in this Court—*Roth* and *Adler* are beside the point.

[2] The trial court found that the transfer of petitioner was an ad hoc decision by the Superintendent based on his "mistaken belief that the Department of Health, Education & Welfare would have required a reshuffling of the faculty racial ratio at Joanna Elementary School." (12a) The trial court further found that the Superintendent "had never made any attempts whatsoever to transfer any other teachers at Joanna or at any of the other schools experiencing similar or worse [racial imbalance] problems than those thought to be occurring at Joanna." (10a).